IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 19886 of 2007(P)

AGAINST THE ORDER IN EP 152/99 EA 45/05 IN
OS.64/1995 of PRINCIPAL SUB COURT,KOLLAM

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PETITIONER:

A.SHERAFUDEEN, AGED 57 YEARS,
S/O.ABDUL AZEEZ, KUTTIYIL VEEDU,
CHANDANATHOPPU.P.O., KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

THE CATHOLIC SYRIAN BANK LTD.,
KILIKOLLOOR BRANCH, KOLLAM,
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.B.S.KRISHNAN SC C.S.BANK
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: A TRUE PHOTOCOPY OF THE DECREE DT. 31/10/1997

EXT.P2: -DO- OF THE RECEIPT SHOWING THE PAYMENT OF RS.15,000/- DATED NIL

EXT.P2A: -DO- OF THE RECEIPT SHOWING THE PAYMENT OF RS. 35,000/- DATED 9.8.2005

EXT.P2B: -DO- OF THE RECEIPT SHOWING THE PAYMENT OF RS. 22,000/- DATED 12.5.2007

EXT.P3: -DO- OF THE PETITION FOR SETTING ASIDE THE SALE DATED JUNE 2007

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 19886 OF 2007

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is filed seeking a direction to the Court below to pass orders in Ext.P3 application. I had perused Ext.P3 application. The prayer in Ext.P3 is to set aside the sale which has conducted on 27.11.02 and confirmed on 30.6.03. There are only two provisions under the Code of Civil Procedure which enables the Court to set aside the sale, namely, Order 21 Rule 89 and Order 21 Rule 90. Both these rules fix a time limit for setting aside the sale and it is made clear that the provisions of the Limitation Act cannot be applied to execution proceedings. So there is no provision of law now which enables the Court to set aside the sale which has been confirmed on 30.6.03. Therefore, a direction given to the Subordinate Judge to dispose of Ext.P3 will not be of any use for the reason that such an application is absolutely not maintainable. Hence, the writ petition stands dismissed.

2. I make it clear that if there is going to be settlement between the Bank/auction purchaser and the judgment debtor, the only remedy is re-conveyance. In case they settle the matter, they can do even without resorting to the help of the Court.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-